

REMARKS/ARGUMENTS

The Office Action mailed April 20, 2004 has been reviewed and carefully considered. Claims 8 and 11 are canceled. Claims 1 and 12 have been amended. Claims 1-7, 9-10, and 12 are pending in this application, with claim 1 being the only independent claim. Reconsideration of the above-identified application, as herein amended and in view of the following remarks, is respectfully requested.

In the Office Action mailed April 20, 2004, claim 9 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite because the Examiner alleges that there is no antecedent basis for the positive and negative ratings. It is respectfully submitted that independent claim 1 recites that the user-manipulable control includes input controls for indicating a positive rating and a negative rating. Dependent claim 9, which depends from independent claim 1 recites that the user-manipulable control further includes input controls for indicating a most positive rating, a neutral rating, and a most negative rating. Accordingly, there is antecedent basis for a positive rating, a most positive rating, a negative rating, and a most negative rating. In view of the above comments, the rejection of claim 9 as being indefinite under 35 U.S.C. §112, second paragraph, should now be withdrawn.

Claims 1-3, 6-7, and 9-12 stand rejected under 35 U.S.C. §102(a) as anticipated by a product that the Examiner refers to as "Rio Portable MP3 player bundled with MusicMatch Jukebox". The Examiner lists four references labeled A-D to define what the Examiner means by "Rio Portable MP3 player bundled with MusicMatch Jukebox". Although multiple references may be cited in a 102 rejection, the additional references are typically used in addition to a primary reference to show inherency, enablement, or the meaning of a term (see MPEP §2131.01). The

multiple references A-D do not fall under any of the categories. Accordingly, the rejection will be treated as a §103 rejection.

Claims 4-5 stand rejected under 35 U.S.C. §103 as unpatentable over the "Rio Portable MP3 player bundled with MusicMatch Jukebox" in view of U.S. Patent No. 6,208,335 (Gordon).

Claim 9 stand rejected under 35 U.S.C. §103 as unpatentable over the "Rio Portable MP3 player bundled with MusicMatch Jukebox".

Before discussing the cited prior art and the Examiner's rejections of the claims in view of that art, a brief summary of the present invention is appropriate. The present invention relates to a portable media player including a memory device for storing media and a processor. As recited in independent claim 1, the processor is operatively connected to a user-manipulable control and to the memory device for selectively downloading and playing the stored media contents from the memory device of the portable media player. Independent claim 1 further recites that the processor also receives signals from the user-manipulable control for associating the user-supplied rating indicated by the signal with the currently played media content and that the processor is further operable for ranking the media content in response to the user-supplied ratings in the ratings list and selectively downloading and playing media content in said memory based on the user-supplied ratings in the ratings list. Independent claim 1 also recites that the user-manipulable control includes input controls for indicating a positive rating and a negative rating, the processor being operative to move the currently playing content toward one of the top and the bottom of the ratings list if the positive rating is indicated and move the currently playing content toward the other one of the top and the bottom of the ratings list if the negative rating is indicated.

Independent claim 1 has been amended to include the limitations of dependent claim 11 and further recites that the processor is further operable for continuously updating a user-supplied rating of the media content based on signals input by the user during subsequent playing of the media content.

Accordingly, the portable player recited in independent claim 1 allows a user to continually rate the media and compile a playlist from the memory device at the portable player.

Reference A discloses MusicMatch Jukebox, which is a software product that allows a user to record CDs or download music from the Internet onto a computer running the MusicMatch Jukebox software (page 1, section 1). On page 2, section 3, reference A discloses that the digital track may be stored with a preference rating. There is no further disclosure as to how the preference rating is or may be used. Reference B is a press release for MusicMatch Jukebox which lists many features of the MusicMatch Jukebox but does not further describe the preference rating. Reference C is yet another web page describing MusicMatch. The third page of reference C states that the Rio Portable MP3 Player is bundled with MusicMatch.

Reference D discloses the Rio Portable MP3 player. As disclosed on pages 9-10 of Reference D and on page 3 of Reference C, a user records or downloads music using MusicMatch and saves the recorded or downloaded songs on the computer running the MusicMatch software. The user then selects which of the saved songs to save to the Rio Player (see especially the last three lines on page 3 of Reference C which states "Once you've created the perfect MP3 play list for the mood, save it to the Rio player and listen to exactly the music you want wherever you go").

The above references A-D disclose two separate devices: a computer running MusicMatch software and a Rio Portable MP3 player. The Rio player is connectable to the

computer running the MusicMatch Jukebox software for downloading playlists of songs from the computer from lists generated by the MusicMatch Jukebox software. There is no teaching or suggestion that the Rio Portable MP3 player itself runs the MusicMatch Jukebox software. Accordingly, the functions of recording and downloading songs and organizing the songs in playlists is performed by the computer running the MusicMatch Software. Accordingly, the "Rio Portable MP3 player bundled with MusicMatch Jukebox" described by References A-D fails to disclose a portable media player having a processor operatively connected to a user-manipulable control, the user-manipulable control dedicated for generating a signal indicating a user-supplied rating of a currently played media content in response to a user-supplied rating, the user-supplied rating corresponding to one of a plurality of predefined categories of preferences, as expressly recited in independent claim 1. In contrast, References A-D disclose only that the MusicMatch Jukebox software running on a computer allows preference ratings to be associated with the particular tracks. The Rio portable player merely saves the lists that are generated by MusicMatch Jukebox software running on the computer.

The "Rio Portable MP3 player bundled with MusicMatch Jukebox" described by References A-D also fails to disclose, teach or suggest that the processor of the portable media player is further operable for ranking the media content in response to the user-supplied ratings in the ratings list and selectively downloading and playing media content in said memory based on the user-supplied ratings in the ratings list, as expressly recited in independent claim 1. In contrast, References A-D disclose that the MusicMatch Jukebox on the computer is used to generate a list of appropriate music which is then downloaded to the Rio Player (see last three lines of page 3, Reference C). There is no disclosure, teaching or suggestion that that Rio Player can rank the songs saved thereon.

The "Rio Portable MP3 player bundled with MusicMatch Jukebox" described by References A-D also fails to disclose that the processor of the portable player is further operable for continuously updating a user-supplied rating of the media content based on signals input by the user during subsequent playing of the media content, as expressly recited in independent claim 1. In contrast, References A-D disclose only that the MusicMatch Jukebox software in the computer can make any changes to the information in the database. Any changes made to the playlist are made by MusicMatch Jukebox and must be subsequently saved to be implemented on the Rio portable player.


In view of the above amendments and remarks, independent claim 1 is not anticipated by and is not obvious over the "Rio Portable MP3 player bundled with MusicMatch Jukebox" described by References A-D under 35 U.S.C. §§102 and 103.

Dependent claims 2-7, 9-10, and 12 being dependent on independent claim 1, are deemed allowable for the same reasons expressed above with respect to independent claim 1.

The application is now deemed to be in condition for allowance and notice to that effect is solicited.

Respectfully submitted,

COHEN, PONTANI, LIEBERMAN & PAVANE

By 
Alfred W. Froebrich
Reg. No. 38,887
551 Fifth Avenue, Suite 1210
New York, New York 10176
(212) 687-2770

Dated: August 19, 2004